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CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

No. 374

BASIL GOULANDRIS, NICHOLAS GOULANDRIS and LEONIDAS
GOULANDRIS, doing business as GOULANDRIS BROS.,

Petitioners,

against

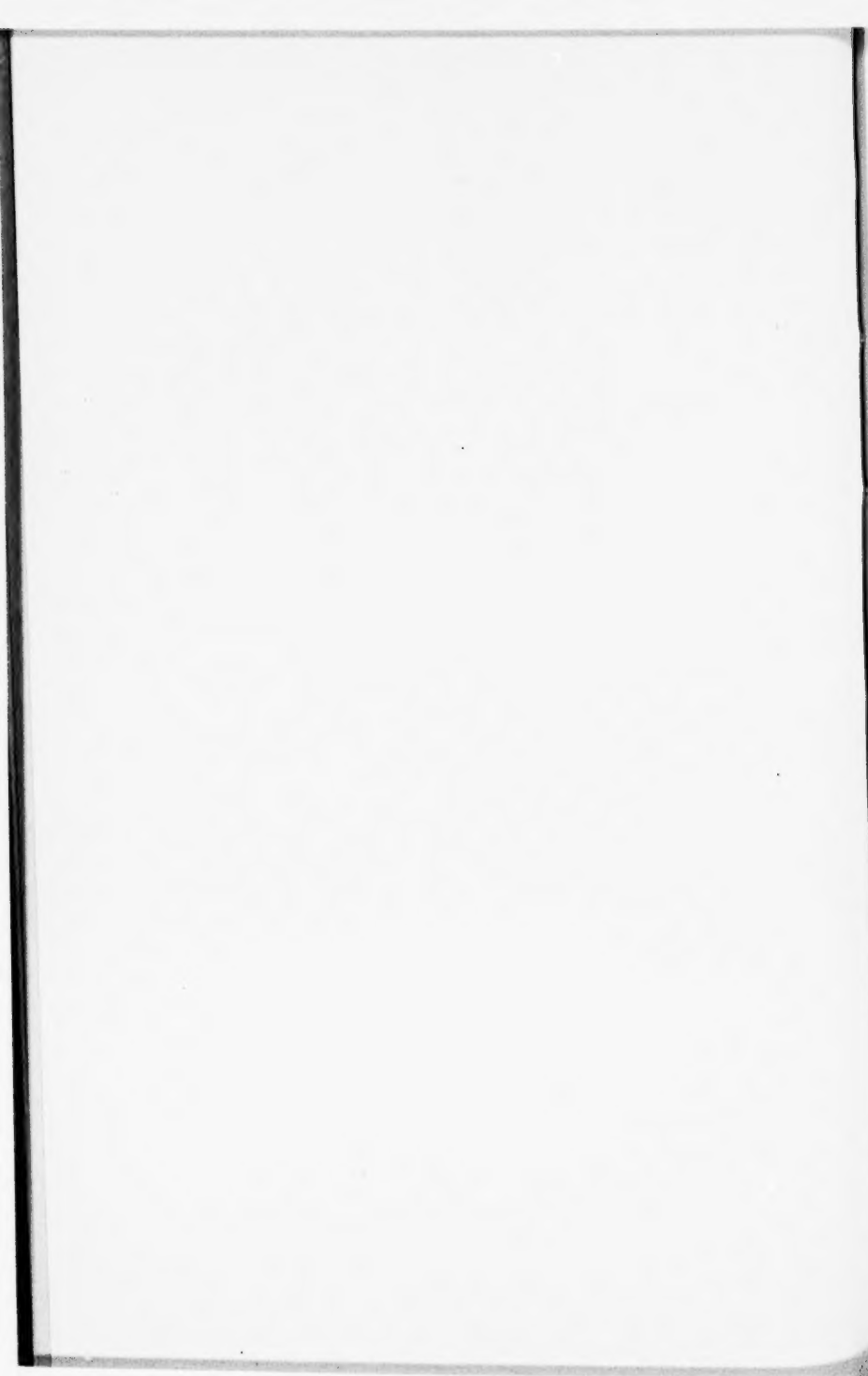
THE AMERICAN TOBACCO COMPANY, R. J. REYNOLDS TOBACCO
COMPANY, LIGGETT & MYERS TOBACCO COMPANY, INC.,
BANK OF GREECE, LEKAS & DRIVAS, INC., POMPEIAN OLIVE
OIL CORPORATION, and VICTOR CORY, an individual doing
business as VICTOR CORY COMPANY,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS OF
THE SECOND CIRCUIT AND BRIEF IN SUPPORT
THEREOF

I. MAURICE WORMSER AND
REID, CUNNINGHAM & FREEHILL,
Counsel for Petitioners.

Dated, May 5, 1944.



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OLIVE OIL CORPORATION, and VICTOR
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VICTOR CORY COMPANY,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS OF THE SECOND CIRCUIT

To the Honorable, the Chief Justice and Associate Justices
of the Supreme Court of the United States:

The petitioners above named respectfully pray for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit to review the decision of said court rendered February 10, 1944 (R. 64-70), affirming the decree of the United States District Court for the Southern District of New York (R. 57-58; 50 F. Supp. 452). The opinion of the Circuit Court of Appeals (R. 64) is reported at 140 Fed. (2d) 780.

I.

Summary Statement of the Matter Involved.

The S. S. *Ioannis P. Goulandris*, a Greek flag vessel owned by petitioners, loaded tobacco at Smyrna, Turkey, to be carried to the United States via Gibraltar, but on account of the outbreak of war between Greece and Italy on October 28, 1940, was ordered to proceed via Suez and Cape of Good Hope (R. 3, 4). Owing to the length of the voyage, delay occasioned in part by compliance with orders of the British Admiralty and a fire, the vessel arrived here on May 3, 1941 with her cargo damaged (R. 40). Shortly before arrival, the vessel was requisitioned by the Greek Government (R. 9) and the funds of her owners, on deposit in the United States, were frozen by virtue of an executive order of the President (R. 55). Claims and suits were thereafter filed against the owners for sums in excess of \$1,000,000 (R. 5).

On November 3, 1941, within six months after written notice of claim was first given, a petition stating the facts and praying exoneration from or limitation of liability was duly filed pursuant to the Act for Limitation of Vessel Owner's Liability, Rev. St. 4281-4289; 46 U. S. C. 181-189 (R. 1-13). Respondents appeared and moved to dismiss the petition upon the ground that petitioners had not, within the prescribed time for the filing of the petition, transferred to a trustee or deposited the value of their interest in vessel and freight, or given security therefor (R. 31-39).

The District Court granted that motion and dismissed the petition holding that the 1936 amendment of the statute (46 U. S. C. 185) must be construed as requiring the limitation fund to be provided before, and not after, the period specified in the statute for the filing of the petition (R. 42-44, 56).

The Circuit Court of Appeals, although seemingly disagreeing with the District Court's construction of the statute, affirmed the decree upon the ground that the statutory requirement was not satisfied unless something further was done during the prescribed time for the filing of the petition, such as an application for an order for a due appraisal of the owner's interest in the vessel and her pending freight and that in reality the petition filed was a mere notice of intention to initiate a proceeding for limitation of liability at some future time (R. 66-70).

II.

Basis of Jurisdiction.

Jurisdiction of this court is invoked under Section 240 a of the Judicial Code, as amended (U. S. C. A. Title 28, Section 347 a).

III.

Questions Presented.

Is a proceeding for limitation of a vessel's owner's liability duly initiated when a petition, stating the facts and circumstances on which limitation of liability is sought with a prayer for relief in that behalf, is filed within the six-month period prescribed in the 1936 amendment of the Statute (46 U. S. C. 185).

IV.

Reasons Relied Upon for Allowance of the Writ.

1. The Circuit Court of Appeals has decided an important question of Federal Law which has not been, but should be settled by this Court. Moreover, the decision is in probable conflict with the decisions construing the amendment of the statute involved of the Circuit Court of Appeals for the Fourth Circuit in *Standard Wholesale P. &*

A. Works v. Travelers Ins. Co., 107 Fed. (2d) 373; *The Fred Smartley, Jr.*, 108 Fed. (2d) 603; *The Bright*, 38 Fed. Supp. 574 (affd. 124 Fed. [2d] 45), and in direct conflict with the decision of a District Court of the Third Circuit in *The Chickie*, 39 Fed. Supp. 200.

2. The decision rendered is of such a nature as to invoke the exercise of this Court's power of supervision in order that shipowners will not be left on an uncharted sea of doubt as to how relief may be sought under the 1936 amendment of this remedial statute which has been given three distinct judicial interpretations by various lower courts. If procedural steps, which necessarily follow the filing of a petition, must be taken or completed within the limited period of six months allowed for the filing of the petition, the necessary effect would be to cut down the privileges of the shipowner by requiring the filing of the petition within a shorter period than that specifically granted by the statute. This would defeat its very purpose. The Congress, as appears from its reports on this amendment, never intended to disturb Rule 51 of the United States Supreme Court Admiralty Rules by fixing an arbitrary time limit for the completion of the various procedural steps which follow the filing of the petition, such as the application for an order for a due appraisalment, the judicial inquiry to ascertain the amount of the owner's interest in the vessel and pending freight and the order directing the owner to deposit the amount thereof in court or to secure the same.

WHEREFORE, your petitioners, referring to the annexed brief in support of the foregoing reasons for review, respectfully pray that this Honorable Court issue a writ of certiorari, directing the United States Circuit Court of Appeals for the Second Circuit to certify and send to this Court a full and complete transcript of the record herein,

to the end that the said cause may be reviewed and determined by this Court, as provided by law, and that the decree of the Circuit Court of Appeals may be reversed, and that your petitioners may have such other and further relief as to this Honorable Court may seem just.

Dated, May 5, 1944.

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Petitioners,

By I. MAURICE WORMSER and
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